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VIRGINIA LAW REGISTER.

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MISCELLANEOUS NOTES.

REMINISCENCES OF VIRGINIA'S JUDGES AND JURISTS.—By the enterprise of our publishers, we present to our readers, as a supplement to this number of the REGISTER, the address with the above title, delivered on February 7, 1895, by Hon. J. Randolph Tucker, at the banquet tendered by the Richmond Bar Association to the Judges of the new Court of Appeals. The supplement can be bound with the numbers of the REGISTER, and thus preserved in permanent form.

It is an interesting fact that at the time of the delivery of this address, just fifty years had elapsed since Prof. Tucker's admission to the bar in the city of Richmond; and he speaks of himself as "a veteran with more than semi-centennial memories." Probably no other man in Virginia has had such wide acquaintance with her distinguished sons, or possesses such affluence of recollections of the Bench and Bar. The "Reminiscences" will perpetuate the memory of the great judges and jurists whom Virginia has delighted to honor; and Prof. Tucker deserves the gratitude of the profession for his noble tribute to their virtues and learning.

JUDGE BENJAMIN W. LACY.—As was announced in the June number of the REGISTER, the death of Judge Lacy, late of the Virginia Court of Appeals, occurred at his residence in New Kent county, May 15, 1895. We now proceed to fulfil our promise to give a sketch of his life and public services. We take the following account of his career, condensed to meet the limits of our space, from the Richmond *Dispatch*, of May 16:

Benjamin Watkins Lacy was born in New Kent county, January 27, 1839. He was the son of Hon. Richmond Terrell Lacy, who represented the counties of New Kent and Charles City in the House of Delegates for a number of years. His mother was a daughter of Colonel John Lane, of Rappahannock county. He completed his education at the University of Virginia, and then entered the office of his father, where he read law until the breaking out of the war. He volunteered in the Confederate army April 19, 1861, as a private in a cavalry company, of which he eventually became captain. He served gallantly until the close of the war, and was severely wounded several times.

When the war ended, Captain Lacy returned to the office of his father, who was still in active practice. He was taken into partnership in June, 1866, and four years later became Judge of the County Court. In 1873, he was elected to the Legislature, and served four terms. He was a member of the Committee for Courts of Justice, and for one term was Speaker of the House. In 1880, he was elected Circuit Court Judge, and three years later was elevated to the Supreme Court of Appeals of Virginia, where he sat for twelve years, retiring at the beginning of the present year.

Judge Lacy had been ill since early last Fall. No opinion is reported as delivered by him at the Staunton term of the court, and he was unable to attend its last session at Richmond. His last opinion—*Norfolk &c. R. Co. v. Marshall's Adm'r.*, 90 Va. 836—was prepared at his home in New Kent and sent to Richmond. He intended to resume the practice of the law, and opened an office in Richmond; but his health steadily declined, and he returned to his home to die. His wife survives him with four children.

It is proper that we should add some account of Judge Lacy's record as a judge of the Court of Appeals. The fourteen volumes containing his decisions—77th to 90th Va.—disclose that until a short time before his retirement from the bench he did his full share of the work of the court, his opinions covering a wide range of subjects, and always displaying a clear mind and vigorous thought. His dissenting opinions are numerous, showing that he had the courage of his convictions. He was a man of fine natural gifts, a close student, and a hard worker.

We append, without any attempt at completeness, some of the more important cases in which Judge Lacy delivered the opinion of the court: *Burks v. Hinton*, 77 Va. 1 (the tenure of judicial office in Virginia); *Western Union Telegraph Co. v. Reynolds Bros.*, 77 Va. 173 (measure of damages for failure of a telegraph company to transmit a cipher message—see *Primrose v. W. U. Tel. Co.* 154 U. S. 1); *Breeding v. Davis*, 77 Va. 639 (construing the Virginia Married Woman's Act of April 4, 1877, as to curtesy initiate; *Gurnee v. Johnson's Ex'or.*, 77 Va. 712 (priority when a debtor against whom there are senior undocketed and junior docketed judgments gives a deed of trust on part of his land); *Dun v. Seaboard &c. R. Co.*, 78 Va. 645 (protrusion by passenger of arm out of the open window of a railway car in motion contributory negligence as a matter of law); *Halsey v. Peters' Ex'or.*, 79 Va. 60 (when equity will decree specific performance of land claimed under a parol gift—see now Code Va. §2413); *Kendall Bank Note Co. v. Comm'rs of Sinking Fund*, 79 Va., 563 (manufacturer's measure of damages against buyer in default); *Cornett v. Rhudy*, 80 Va. 710 (water rights by prescription in Virginia—see *Tunstall v. Christian*, 80 Va. 1); *Randolph v. Wright*, 81 Va. 608 (distinguishing *May v. Joynes*, 20 Gratt. 692); *Hanriot v. Sherwood*, 82 Va. 1 (introducing in Virginia the doctrine of "comparison of hands"); *Norfolk &c. R. Co. v. Prindle*, 82 Va. 122 (damages for injury to the wife's person not her separate estate under Acts 1876-7, p. 333—see Code Va. §2284; *Burks' Property Rights of Married Women*, p. 79); *Nickels v. Kane's Adm'r.*, 82 Va. 309 (defining champerty in Virginia); *Sterling v. Wilkinson*, 83 Va. 791 (invalid gift *causa mortis*, following *Basket v. Hassell*, 107 U. S. 602); *Perkins v. Jones*, 84 Va. 358 (effect on an olograph will signed by the testator of an attestation clause not signed by witnesses); *Rolland v. Batchelder*, 84 Va. 664 (construing the Virginia Statute of

Insulting Words); *Crockett v. Doriot*, 85 Va. 240 (Married Woman's Contract under Acts 1876-7, p. 333); *Marshall v. Savings Bank*, 85 Va. 676 (liability of bank directors to stockholders for negligence); *Fry v. County of Albemarle*, 86 Va. 195 (counties in Virginia not liable for injuries caused by the negligence of their officers—followed by the new court in *Field v. Albemarle Co.*, 20 S. E. Rep. 954); *Lee v. Bumgardner*, 86 Va. 315 (when a right to dig ore in the land of another is a corporeal hereditament); *Strayer v. Long*, 86 Va. 557 (rule for computing the present value of a wife's contingent right of dower); *Warwick v. Warwick*, 86 Va. 596 (what is a signature to a will under the Virginia statute); *Western Union Tel. Co. v. Williams*, 86 Va. 696 (what constitutes an additional servitude on land condemned for a highway); *Gentry v. Gentry*, 87 Va. 478 (specific performance of a married woman's contract to sell her lands under Code Va. §§ 2286, and 2288-9); *Otterback v. Bohrer*, 87 Va. 548 (rule against perpetuities); *Mumpower v. City of Bristol*, 90 Va. 151 (effect of prior occupancy of stream by mill-dam—see 7 Harvard Law Review, p. 186, where this decision is criticised as opposed to the great weight of authority).

The following are important cases in which Judge Lacy dissented: *Kendrick v. Com.*, 78 Va. 490 (denying the doctrine of the court that the legislature can compel a witness to give evidence against himself in a criminal case by providing immunity by statute. See *Counselman v. Hitchcock*, 142 U. S. 547; *Interstate Commerce Comm'n v. Brimson*, 154 U. S. 447, 480); *Muscoe v. Com.*, 86 Va. 443 (right of police officer to arrest for misdemeanor without warrant); *Norfolk &c. R. Co. v. Commonwealth*, 88 Va. 95 (denying the doctrine of the court that statutes forbidding interstate freight trains to run on Sunday are void as a regulation of interstate commerce); *Miller v. Com.* 88 Va. 618 (the famous Mary Miller case, reversed by the new Court of Appeals in *Brown v. Epps*, 1 Va. Law Reg. 14); *Thomas's Adm'r v. Bettie Thomas Lewis*, 89 Va. 1 (denying the doctrine of the court that § 2414 of the Code of Virginia embraces only gifts *inter vivos* and not gifts *causa mortis*).

Judge Lacy was one of the concurring judges in the great case of the *Protestant Episcopal Education Society v. Churchman's Rep's.*, 80 Va. 718, which overthrew the doctrine (which had been deemed canonized in Virginia) of *Gallego's Ex'ors v. Atty General*, 3 Leigh 450, as to indefinite charities. See also *Trustees &c. v. Guthrie*, 86 Va. 125.

C. A. G.